

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
LOC CAPITAL, INC.

) OTA Case No. 231114728
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OPINION

Representing the Parties:

For Appellant:

Chad O'Connor, President

For Respondent:

Noel Garcia-Rosenblum, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Loc Capital, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$3,426.81 (including interest) for the 2021 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived its right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUES

1. Whether the late payment penalty should be abated.
2. Whether the estimated tax penalty should be abated.

FACTUAL FINDINGS

1. Appellant is an "S" corporation. Appellant's 2021 taxes were due on March 15, 2022; however, it did not remit payments until August 2022 (following the August 22, 2022, filing of its 2021 tax return) and July 2023 (after Notices from respondent of a balance due and collection action).

2. Consequently, respondent imposed a late payment penalty of \$2,861.92 and an estimated tax penalty of \$250.89.
3. Respondent's Notices to appellant were sent to 375 Albion, which was the address on appellant's 2021 tax return.
4. Appellant paid the balance due, and filed a refund claim for the penalties assessed, which respondent denied.

DISCUSSION

Issue 1: Whether the late payment penalty should be abated.

A late payment penalty is imposed when a taxpayer fails to pay the amount shown on the return by the date prescribed for the payment of tax. (R&TC, § 19132(a).) Generally, the date prescribed for the payment of the tax is the due date of the return, without regard to any extension of time for filing the return. (R&TC, § 19001.) For an "S" corporation, such as appellant, the due date of its return, without regard to any extension, and the date prescribed for payment of the tax, is the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d).)

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Respondent's determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, respondent's determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219.) The law provides that taxpayers have a non-delegable obligation to pay their taxes by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to pay by the due date is not reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Rougeau*, 2021-OTA-335P.)

Here, appellant asserts that it paid late because its CPA used the wrong address on its 2021 tax return (it was off by one digit), which was the address used by respondent on the

Notices. However, the errant address on the return did not prevent appellant from paying its taxes timely as the due date for the payment of tax is set by law (and not dependent on respondent sending the taxpayer a notice), and its first payment was made more than five months late, before respondent's Notices were sent. Moreover, as noted above, appellant cannot rely on its CPA for the timely payment of its taxes, and a reasonable person would have reviewed the tax return for accuracy before filing it. (See *U.S. v. Boyle, supra*; *Appeal of Rougeau, supra*.) Therefore, appellant cannot attribute the late payment of its taxes to its CPA, and it has failed to prove that there was reasonable cause to pay its taxes late.

Issue 2: Whether the estimated tax penalty should be abated.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a).) There is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra*.) A similar estimated tax penalty is imposed on S corporations. (See R&TC, §19142, 19144.) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies. (*Appeal of Johnson, supra*.)

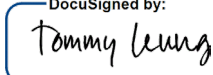
Here, appellants make no separate argument that they qualify for an exception to the estimated tax penalty, and there is no evidence in the record that an exception would apply. Instead, appellants make the same assertions outlined above regarding the incorrect address on respondent's Notices. Thus, there is no basis to abate the estimated tax penalty.

HOLDINGS

1. The late payment penalty cannot be abated.
2. The estimated tax penalty cannot be abated.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 10/18/2024